

FINDINGS OF FACT AND CONCLUSIONS OF LAW

sought medical treatment from Dr. Herbert M. Sisk. He gave claimant restrictions against lifting that respondent could not or would not accommodate. She has not worked since.

Claimant testified that she immediately reported her injury to her supervisor, Frank Carpino, and requested she be allowed to trade machines to a lighter bag. She did make this change and thereafter continued with this lighter job until May 14, 1998. Mr. Carpino, however, testified that he had no recollection of claimant reporting a work-related accident to him. From its review of the record as a whole, the Appeals Board finds that this notice was given and was timely.

The Appeals Board finds claimant sustained personal injury by accident on March 25, 1998. Thereafter, her symptoms continued to worsen to the point where she felt she could no longer continue working. She then obtained medical treatment and stopped working due to her restrictions. It is not clear whether this subsequent work caused an aggravation, but Dr. Brian K. Ellefsen says "it is relatively common to have initial pain from the herniated disc, which gets better with rest and then progresses with increasing activities." This is consistent with what claimant described happened.

It would hurt while I was at work, and then while I was off on the weekends the pain would be less, and when I would go back to work, it would start hurting more.

Based upon the evidence as it presently exists, the Appeals Board finds that claimant did suffer an aggravation each and every working day after March 25, 1998. The Appeals Board finds claimant's accidental injury was caused by the work activities she was performing for respondent and that the accidental injury arose out of and in the course of claimant's employment with respondent.

The Appeals Board also finds claimant provided respondent timely notice of accident. Claimant notified her supervisor of her leg pain and related it to her work activities. Thereafter, claimant repeatedly advised respondent she was experiencing difficulties.

Although claimant related the leg symptoms to a specific incident which occurred at work in March 1998, the notice was sufficient under K.S.A. 44-520 to alert respondent to a work-related accident and permit respondent to investigate the accidental injury, including the question of whether claimant sustained additional injury as a result of her work activities after the date of the specific incident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Steven J. Howard dated October 2, 1998, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1998.

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Michael J. Haight, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director